

**REMARKS****INTRODUCTION:**

In accordance with the foregoing, claim 12 has been amended. No new matter is being presented, and approval and entry are respectfully requested.

Claims 1, 2, and 4-14 are pending and under consideration. Claims 1, 2, 4-11 and 13-14 are allowed. Reconsideration is respectfully requested.

**REJECTION UNDER 35 U.S.C. §112:**

In the Office Action, at pages 2-3, numbered paragraph 3, claim 12 was rejected under 35 U.S.C. §101 for the reasons set forth therein. This rejection is traversed and reconsideration is requested.

Although the Examiner submits that the computer medium is defined in the specification on page 12, lines 10-13 as being a signal, Applicants respectfully disagree. Claim 12 recites: "A computer-readable medium encoded with operating instructions." The courts have specifically acknowledged that a "general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software. Similarly, computer executed processes have long been recognized as patentable. It is respectfully submitted that a computer system executing software constitutes patentable machine claims for computer instructions embodied in a computer readable medium do constitute statutory subject matter. Programming a computer readable medium with computer instructions places the computer readable medium within the broad definition of manufacture of *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U.S. 1 (1931) and *Diamond v. Chakrabarty*, 447 U.S. 303 (1980).

The term "computer readable medium" encompasses items such as compact disks, magnetic disks, magnetic tapes, and other similar articles which by themselves are clearly statutory subject matter under § 101.. The "material" (i.e., the disk) is given new "qualities" and "properties" in that the programmed disk causes the computer to function in a different manner. For example, a compact disk programmed with the video game "Mortal Kombat" surely is given new "qualities" and "properties" by the placement of the program thereon. Namely, it allows a user to turn a computer into a virtual stage for a bloody massacre. As proper statutory subject matter, such claims should be evaluated "as a whole," including the claimed functions embodied in the computer instructions.

In addition, the Examiner submits that claim 12 has "program" per se recited in the preamble, and Applicants respectfully disagree. The terminology "program" is not recited in the preamble, and it is submitted that the preamble, as amended, clearly states tangible subject matter.

For clarity, the preamble of claim 12 has been amended to recite: "A tangible computer-readable medium encoded with operating instructions for implementing a method of controlling power in an optical device, wherein the method is performed by a computer, the method comprising." The Examiner stated: "a claimed tangible computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory." Thus, it is respectfully submitted that amended claim 12 now recites a claimed tangible computer readable medium encoded with a data structure that defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Hence, amended claim 12 is submitted to be patentable under 35 U.S.C. §101.

#### **ALLOWABLE SUBJECT MATTER:**

In the Office Action, at page 3, numbered paragraph 4, the Examiner allowed claims 1, 2, 4-11 and 13-14 (In view of the rejection on page 2 and the notation on the Office Action Summary page, it appears that a typographical error was made, and that the Examiner intended not to allow claim 12). This rejection is traversed and reconsideration is requested.

Applicants thank the Examiner for his careful review of the claims and allowance of claims 1, 2, 4-11 and 13-14.

#### **CONCLUSION:**

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot, and further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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